

ORDINANCE NUMBER _____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA
AMENDING SANTA MONICA MUNICIPAL CODE CHAPTER 7.10 TO UPDATE AND
CLARIFY THE URBAN RUNOFF POLLUTION ORDINANCE

WHEREAS, the City has a long and abiding commitment to the protection of our beaches and ocean resources and to the protection of the health and safety of the millions of residents and visitors who enjoy the Santa Monica beaches and ocean front each year; and

WHEREAS, the City is authorized pursuant to Article XI, §5 and §7 of the State Constitution to exercise the police power of the State by adopting regulations to promote health, safety, and general welfare; and

WHEREAS, the City is authorized under the California Water Code to adopt and enforce regulations imposing conditions, restrictions, and limitations with respect to any activity which might degrade the quality of waters of the State; and

WHEREAS, the City's watershed management program consists of operation and maintenance of the City-owned stormwater system; compliance with Federal, State, and local regulations including inspections, monitoring, and enforcement; implementation of the Santa Monica Bay Restoration Plan and the Watershed

Management Plan; and capital improvement projects to reduce and treat polluted runoff; and

WHEREAS, the City operates and maintains 20 miles of storm drains, 824 catch basin and other major infrastructure; and

WHEREAS, the City is responsible for the quality of the runoff and for all water quality permitting and compliance related to stormdrain discharges into the ocean or other water channels such as Ballona Creek; and

WHEREAS, urbanization has led to increased impervious surface areas that results in increased runoff and the transport of pollutants to downstream receiving waters and less percolation to groundwater aquifers; and

WHEREAS, State and Federal agencies have implemented stringent regulatory standards for broad categories of water pollutants and continue to enhance these requirements; and

WHEREAS, these regulatory standards include mandatory City compliance with Total Maximum Daily Load (TMDLs); and

WHEREAS, the TMDL standards for which the City is responsible are those related to Santa Monica Bay and Ballona Creek; and

WHEREAS, the TMDL standards apply to both dry weather and wet weather periods and cover a number of contaminants including bacteria, trash, toxics, metals, pesticides and herbicides, and oil and grease; and

WHEREAS, these standards are in addition to the National Pollution Discharge Elimination System (NPDES) permit requirements for all municipalities with Los Angeles County which have been in place since 1995; and

WHEREAS, in a dynamic regulatory environment that continues to be developed by the Regional Board, established TMDLs are continuously revisited and updated, new TMDLs continue to be established, and the City's compliance responsibilities continue to change over time; and

WHEREAS, the City has established a multi-faceted approach to stormwater and runoff treatment and management; and

WHEREAS, in August 1992, the City adopted the Santa Monica Urban Runoff Pollution Control Ordinance to reduce detrimental water quality impacts from urban runoff on the Bay by requiring a runoff reduction of 20 percent for all new development, implementing pollution control standards for construction sites, and setting good housekeeping requirements for existing parcels; and

WHEREAS, in July 1995, the City created a Stormwater Enterprise Fund and adopted a stormwater parcel fee to cover capital and operational costs associated with the storm drainage system and the management and administration thereof; and

WHEREAS, in November 2000, in response to new Regional Board requirements, the City revised the Urban Runoff Ordinance to establish an urban runoff retention or treatment standard of the volume of runoff produced from a 0.75 inch storm event; and

WHEREAS, in July 2006, the City approved a Santa Monica Watershed Management Plan which is designed to reduce urban runoff pollution, reduce urban flooding, increase water reuse and conservation, increase recreational opportunities and open space and increase wildlife and marine habitat; and

WHEREAS, the urban runoff management and pollution prevention activities of the Plan will assist the City in complying with NPDES permit requirements and meeting the goals of the Clean Water Act and new requirements promulgated by the Regional Board relating to TMDLs.

WHEREAS, in November 2006, the Santa Monica voters approved the Clean Beaches and Ocean Parcel Tax (Measure V) to raise revenues to implement the City's Watershed Management Plan; and

WHEREAS, on January 26, 2010, the City Council adopted the Measure V FY 2010-11 through FY 2014-15 Five Year Plan which includes green streets, park retrofits where storm water is harvested and used for irrigation purposes, parkway/sidewalk biofilters, catch basin inserts, curb extensions, rebate programs for the installation of rain barrels, cisterns, and for downspout redirection, regional project contributions, and the use of permeable surface construction in the public right of way; and

WHEREAS, the City can mitigate the negative impacts of development and urbanization by implementing new development/re-development performance criteria, known as Low Impact Development which is widely recognized as an appropriate approach to watershed management; and

WHEREAS, the Measure V funds are not sufficient to meet all the water quality standards that the City is required to comply with, but are used to address urban runoff pollution generated from public and private lands, in conjunction with all funds generated by the City's Stormwater Enterprise Fund; and

WHEREAS, the proposed revisions to the City's Urban Runoff Ordinance incorporate necessary changes based on the City's extensive experience in

implementing the Ordinance, the objectives of the City's Watershed Management Plan, and on Regional Board requirements that are expected to become part of the new NPDES permit,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7.10 of the Santa Monica Municipal Code is hereby amended as follows:

CHAPTER 7.10 URBAN RUNOFF POLLUTION

7.10.010 Findings.

The City Council finds and declares:

(a) Urban runoff flows from individual properties onto streets and alleys, then through storm drains to the beaches. It is therefore in the public interest to ensure that both public and private drainage systems are properly maintained in order to facilitate the proper functioning of the City's storm and surface water drainage system, and to prevent pollutants from entering the Santa Monica Bay.

(b) The number of beach closures and postings in the state due to ocean pollution continue at unacceptable levels, especially in Southern California. Urban runoff is the single largest source of this ocean pollution, and consequently, is a substantial threat in the State to public health and water quality.

(c) The City is a co-permittee under the Los Angeles County National Pollutant Discharge Elimination System (NPDES) Municipal Permit and as such is obligated to implement a Standard Urban Storm Water Mitigation Plan (“SUSMP”) or equivalent, post-construction Best Management Practices (“BMPs”) and Total Maximum Daily Loads (TMDLs) to reduce the entry of pollutants into the City storm drain system and to reduce the overall amount of urban runoff entering Santa Monica Bay and Ballona Creek.

(d) In order to reduce runoff pollution and volume from private and publicly-owned properties planned for development, a program is required to ensure that new developments/re-developments or construction projects incorporate design elements, such as post-construction BMPs, construction BMPs, and Low Impact Development strategies, and that existing properties adopt good housekeeping practices.

(e) Southern California experiences cycles of drought, which can lead to dramatic water shortages. The current state-wide declaration of drought is a signal to local governments to promote sustainable uses of non-traditional, non-potable local water supplies, such as rain water and storm water, in place of more valuable potable water, which is often imported from distant watersheds at great environmental costs.

(f) To promote sustainable solutions for urban runoff pollution and the use of local non-potable water supplies, the City strongly encourages the use of dry weather runoff, rain water and storm water harvested by post-construction BMPs which collect and store runoff for non-potable onsite uses.

(g) It is in the best interest of the City to establish guidelines for control of the quality and quantity of urban runoff within the City.

7.10.020 Purpose.

The purpose of this Chapter is to permanently modify the behavioral and structural causes of urban runoff pollution by reducing runoff volume and pollution from existing residential and non-residential properties and from future parcel developments. The goal is to ensure that project parcels maximize onsite storage and use, percolation, or evapotranspiration of runoff through a hierarchy of post-construction BMP strategies, called Low Impact Development.

7.10.030 Definitions.

The following words and phrases shall have the following meanings when used in this Chapter:

(a) **Accessory Building.** A detached building on the same parcel as the principal building, regardless of its distance from the

principal building, which is incidental and subordinate to the principal building in terms of size and use.

(b) **Area Susceptible to Runoff.** Any non-permeable surface directly exposed to precipitation or in the path of runoff which leads directly to neighboring properties or to the public right-of-way.

(c) **Best Management Practices (“BMPs”).** Non-structural strategies and structural devices, whether temporary and permanent, practices that reduce the pollution contained in, and the volume of, water which runs into storm drains, treatment facilities and the Santa Monica Bay. These BMPs include but are not limited to **good housekeeping requirements (GHR), post-construction BMPs, full capture trash BMPs, source control BMPs, structural BMPs, and treatment control BMPs.**

(d) **Environmentally Sensitive Area (ESA).** Area designated by the Regional Board requiring special protection because of its landscape, wildlife or historical value.

(e) **Full Capture Trash BMP.** A structural device or series of devices installed to remove all particles larger than 5 mm and having a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour storm. Such a system is considered a **post-construction BMP** and **treatment control BMP.**

(f) **Good Housekeeping Requirements (“GHR”). Urban runoff pollution** control practices applicable to all properties, which have been demonstrated to significantly reduce and control **urban runoff**, such as **source and treatment control BMPs**.

(g) **Green Transportation Infrastructure.** Streets, roads and alleys that have **post-construction BMPs** to harvest runoff for storage and onsite use, including green streets and green alleys.

(h) **Hardscape.** Any impermeable surface exposed to precipitation or runoff.

(i) **Hierarchy of BMPs.** A list of acceptable **post-construction BMP** categories that identifies and ranks the most sustainable to least sustainable strategies to reduce **urban runoff pollution in compliance** with this ordinance.

(j) **Low Impact Development (LID).** LID is a comprehensive stormwater management, land planning and engineering design approach which utilizes **BMPs** with a goal of conservation and the use of onsite natural features to maintain and enhance the pre-development hydrologic regime of urban and developing watersheds, including individual parcels.

(k) **Municipal Separate Storm Sewer System (MS₄).** An **MS₄** is a municipal piping system that conveys dry weather runoff or storm

water from individual parcels and public right-of-ways to storm drains, treatment facilities and the Santa Monica Bay.

(l) **National Pollutant Discharge Elimination System**

(NPDES). A system implemented and enforced by a permit issued by the U.S. Environmental Protection Agency, State Water Resources Control Board, or the California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

(m) **New Development/Re-development.** For purposes of this Chapter, New Development/Re-development shall constitute any of the following if the construction project(s) is proposed at any time over a single 36-month period:

(1) Any construction project on a vacant parcel.

(2) Any construction project that (a) adds fifty percent or more of the square footage of a structure, (b) is a **substantial remodel**, (c) adds or replaces fifty percent or more of the exterior footprint of a structure on a parcel, or (d) creates, adds, or replaces at least twenty-five hundred square feet of impervious surfaces.

(3) Any construction project that involves a separate new structure with an exterior footprint of 400 square feet or more, including an **accessory building**, on one parcel with existing structures.

(4) Any construction project located in or directly adjacent to, or discharging directly to, an Environmentally Sensitive Area.

(n) **Post-Construction BMP.** A permanent, structural BMP that remains on a parcel after the completion of a **new development/re-development** project to comply with urban runoff mitigation requirements.

(o) **Principal Building.** The building containing the primary or predominant use of any site.

(p) **Project Mitigation Volume.** One hundred percent of the runoff produced by a storm event falling on all impermeable surfaces of a parcel unless the **new development/redevelopment** project adds or replaces less than 50% of the principal building on the parcel, if any, and the new development/redevelopment project's square footage is less than 50% of all existing structures on the parcel in which case the project mitigation volume shall be one hundred percent of the runoff produced by a storm event falling on the impermeable surfaces of the structure(s) within the scope of the **new development/redevelopment** project and its/their proportional parking areas.

(q) **Rainwater Harvesting.** The process of collecting, treating, storing and using rain water from onsite or offsite impermeable areas for non-potable uses.

(r) **Source Control BMP.** Non-structural activities, practices, and procedures that are designed to prevent urban runoff pollution.

(s) **Standard Urban Storm Water Mitigation Plan (SUSMP).** Plans developed by the Los Angeles County that designate **post-construction BMPs** that must be used in the nine specified categories of development projects to comply with the regional NPDES permit.

(t) **Storm Event.** 0.75 inches of rainfall within a 24 hour period that is separated from the previous storm event by at least seventy-two hours of dry weather, unless a more stringent standard is mandated by federal, state, or local law.

(u) **Storm Water.** Rain water that has become runoff on a property and flows off the property and enters the **MS₄**.

(v) **Structural BMP.** Any temporary or permanent structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution.

(w) **Substantial Remodel.** A structure shall be deemed to have been substantially remodeled or demolished if at least fifty percent of exterior walls have been removed or relocated for any duration of time.

In determining whether a project is a substantial remodel, a wall shall be deemed to be demolished if the structural supporting members

(columns, two-by-fours, or other such elements) of the wall have been removed or are no longer attached to the foundation. The roof structure must also be retained unless the roof line is being modified or additional floors are being added, in which case the roof structure may be removed.

(x) **Total Maximum Daily Load (TMDL).** A calculation that establishes the maximum amount of an impairing substance or stressor (e.g. pollutant) that a water body can receive and assimilate, and still safely meet Water Quality Standards, defined by the federal Clean Water Act.

(y) **Treatment Control BMP.** Any engineered system designed to remove pollutants by gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological or chemical process, such as **structural BMPs**.

(z) **Unit Cost.** Monetary amount established by a resolution of the City Council based on the average cost per gallon of runoff for the City to construct **post-construction BMPs** on City properties during a five (5) year period prior to the adoption of the resolution. This cost shall be an equivalent option under the **hierarchy of BMPs**.

(aa) **Urban Runoff.** Surface water flowing off of a parcel and into the **MS₄**.

(bb) **Urban Runoff Pollution.** Suspended or dissolved contaminants within **urban runoff** including but not limited to sediments, heavy metals, organic chemicals, nutrients, oil and grease, trash and bacteria flowing through the **MS₄** to a storm drain, treatment facility and the Santa Monica Bay.

(cc) **Urban Runoff Mitigation Plan.** A plan that shall be submitted and approved in connection with any project that is subject to 7.10.050.

(dd) **Urban Runoff Reduction Fee.** A fee paid to the City by the applicant pursuant to Section 7.10.050 (q) in lieu of constructing a **post-construction BMP** to comply with this Chapter.

7.10.040 Good housekeeping requirements for reduction of urban runoff applicable to all properties.

The following good housekeeping requirements shall be adhered to by all persons within the City and shall apply to all properties, public and private.

(a) **Collection, Storage and Minimization of Runoff.**

(1) Water used for irrigation purposes shall not be allowed to run off of a parcel.

(2) Washing down paved areas shall be prohibited unless necessary for health or safety purposes, not in violation of any other provision of this Code, and only performed through high pressure washing. If pressure washing is authorized pursuant to this subdivision (2), BMP measures shall first be implemented to remove solids, such as litter and debris, sediments and any visible liquid hydrocarbons and other chemicals before the washing begins. Water used for pressure washing must be collected and disposed of into the sanitary sewer only or directed to permeable landscaped areas.

(3) The uncovered outdoor storage of unsealed containers of building materials and lawn and automotive care products containing substances that may contribute pollutants to the storm water conveyance system is prohibited.

(4) Commercial tenants, multi-family building managers and industrial owners shall on a weekly basis inspect trash receptacles, refuse and recycling storage areas, and other areas that may collect debris or attract animals for loose garbage and liquid waste residue and shall not allow such garbage and residue to accumulate or enter the storm drain system. Trash receptacles shall have solid covers and shall be closed at all times other than during trash disposal to prevent the entry of rain and animals, and the exit of wind-blown litter. Trash receptacles shall be maintained without broken covers and leaks.

(5) Swimming pools, hot tubs, spas, fountains and water features shall be drained to permeable surfaces and/or to the sanitary sewer, and the water shall not be allowed to flow along the ground surface and into the public right-of-way.

(b) **Maintenance of Equipment.**

(1) Objects, such as vehicle motor parts containing grease, oil or other hazardous substances, and unsealed receptacles containing hazardous materials shall not be stored in areas susceptible to precipitation or runoff.

(2) Any machine which is to be repaired or maintained in an uncovered outdoor area shall be placed on a pad of absorbent material to contain leaks, spills or small discharges.

(3) Machinery and equipment, including motor vehicles that are leaking significant amounts of oil or fluids must be repaired immediately. Any leaks shall not be allowed to leave the property or enter the MS₄.

(c) **Removal of Debris and Residue.**

(1) All motor vehicle parking lots susceptible to precipitation or runoff shall be swept, at minimum, on a monthly basis to remove debris. Lots with more than ten parking spaces and all public parking facilities shall be vacuum swept, at minimum, on a quarterly basis. However, lots

are not required to be vacuum swept for one month following a day when precipitation of one-half inch or more occurs.

(2) Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries, which is located in an area susceptible to precipitation or runoff, shall be removed immediately and disposed of properly. Household hazardous waste may be disposed of at the City's household hazardous waste collection facility or at any other appropriate disposal site and shall not be placed in a trash container.

(3) Intentional disposal of any trash, litter, animal waste, debris or hazardous material of any type into the public right-of-way (storm drain conveyance system) or a storm drain or catch basin is prohibited. Section 5.20.040 of this Code prohibits discharge of other types of pollutants into the storm drain.

7.10.050 Urban runoff reduction requirements for new development/re-development.

The following urban runoff reduction requirements shall apply to all persons submitting applications for New Development/Re-development within the City.

(a) At the time of submittal of an application for a new development/re-development project, an applicant shall be required to

submit an Urban Runoff Mitigation Plan to the Department of Public Works.

(b) The Urban Runoff Mitigation Plan shall demonstrate that an applicant will either store and use for non-potable purposes, infiltrate, or evapotranspire the Project Mitigation Volume through incorporation of design element specified in subsection (c) of this Section, or alternatively, pay an Urban Runoff Reduction Fee in accordance with subsection (q) of this Section unless payment of such a fee is precluded by subsection (s) of this Section. An applicant may satisfy this requirement off-site in accordance with the City's Urban Runoff Off-Site Treatment Guidelines only if the applicant demonstrates that on-site treatment is technically infeasible because the project is located:

(1) where seasonal high groundwater is within 10 feet of surface grade;

(2) within 100 feet of a groundwater well used for drinking water;

(3) at a Brownfield Development site or other location where pollutant mobilization is a documented concern;

(4) within potential geotechnical hazards; or

(5) on a site with impermeable soil type as indicated in applicable soils and geotechnical reports.

An applicant shall only be authorized to treat and release when the applicant demonstrates that the City is required by State or federal law to authorize a treat and release BMP.

(c) The design elements utilized by an applicant may, but are not required to, include the following so long as the Project Mitigation Volume is treated by an authorized BMP:

(1) Direct runoff to rainwater or stormwater harvesting systems (rain barrels and cisterns) for non-potable uses.

(2) Use permeable areas with Low Impact Development strategies to allow passive rainwater harvesting for more percolation of runoff into the ground through such means as:

(A) Bioretention;

(B) Green strips, including parkways and medians. The use of landscaped BMPs to mitigate runoff from impermeable areas must include the appropriate storage volume for the required mitigation volume, in addition to precipitation volumes falling on these surfaces.

(C) Swales;

(D) Landscapes. The use of landscapes to mitigate runoff from impermeable areas must include the appropriate storage volume for the

required mitigation volume, in addition to precipitation volumes falling on these surfaces; or

(E) Permeable paving materials, such as but not limited to pervious concrete and porous asphalt, permeable concrete and plastic modular and interlocking paving materials, and equivalent materials. The use of this BMP to mitigate runoff from impermeable areas must include the appropriate storage volume for this required mitigation volume, in addition to precipitation volumes falling on these surfaces.

(3) Direct runoff to permeable areas for infiltration through Low Impact Development strategies. The use of permeable areas to mitigate runoff from impermeable areas must include the appropriate storage volume for this required mitigation volume, in addition to precipitation volumes falling on these surfaces:

(A) Orient roof runoff and direct downspouts towards permeable surfaces, infiltration pits (drywells), french drains, or other structural BMPs rather than directly to driveways, parking lots or other non-permeable surfaces so that runoff will penetrate into the ground instead of flowing offsite to the MS₄.

(B) Grade the parcel to divert flow to permeable areas.

(C) Use retention structures or terrain (green or eco) rooftops to harvest precipitation or runoff.

(D) Remove or design curbs, and berms to allow runoff from impermeable surfaces (e.g. parking lots) to drain to permeable or landscaped areas.

(E) Direct downspouts to permeable areas instead of to the MS₄.

(F) For structures without roof gutters and downspouts, all runoff must fall onto or drain directly or indirectly to permeable areas having proper grading and storage volume for the required mitigation volume, and pose no threat to structural integrity or adjacent structures.

(G) Surface parking lots with no sub-surface structures shall have runoff directed to permeable, storage or infiltrating areas, including sunken planters and/or with non-continuous curbs. Where surface BMPs mitigate runoff from impermeable areas, they must include the appropriate storage volume for this required mitigation volume, in addition to precipitation volumes falling on these surfaces.

(d) For purposes of compliance with this Section, excluding any impermeable deck areas, the surface area of pools, hot tubs, spas, fountains and water features shall be considered 100% permeable, if these water features discharge to the sanitary sewer.

(e) The Urban Runoff Mitigation Plan must also include the applicant's plan for the maintenance of all BMPs requiring ongoing maintenance.

(f) All Urban Runoff Mitigation Plans must include the applicant's signed statement accepting responsibility for all structural and treatment control BMP maintenance. The transfer of property subject to an Urban Runoff Mitigation Plan must include as a written condition to the transfer that the transferee assumes full responsibility for maintenance of any structural, and/or source or treatment control BMPs as set forth in subsection (p) of this Section.

(g) In addition to the design standards required in subsection (c), the following design strategies established in this subsection (g) shall be required for all new development/re-development except single-family residences:

(1) Urban runoff shall not be allowed to come into contact with the following areas:

- (A) Loading and unloading dock areas;
- (B) Vehicle repair and maintenance bays;
- (C) Vehicle and equipment wash areas; and
- (D) Fueling areas.

(2) Where new development/re-development will include outdoor areas for the storage of material that may contribute pollutants to the storm water conveyance system, these materials must be:

(A) Placed in an enclosure such as, but not limited to, a cabinet, shed, or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or

(B) Protected by secondary containment structures such as berms, dikes, or curbs.

(3) The outdoor storage area for materials subject to subdivision (2) of this subsection (g) must be:

(A) Paved and sufficiently impervious to contain leaks and spills.

(B) Covered with a roof or awning to minimize collection of storm water within the secondary containment area.

(4) In addition to the requirements of section 9.04.10.02.150, the area where a trash receptacle or receptacles are located for use as a repository for solid wastes must meet the following Structural or Treatment Control BMP requirements:

(A) Drainage from adjoining roofs and pavement must be diverted away from the trash storage areas;

(B) The area must be covered with roof or awning (to prevent rain from entering the area and sewer or storm drain conveyance system), screened or walled to prevent offsite transport of trash, and must be connected to the sanitary sewer. This requirement shall also apply to projects that add or alter a refuse or recycling storage area; and

(C) Trash bins must have solid covers and be covered at all times except while being emptied.

(h) The City shall maintain a list of locations where certain types of BMPs may not be appropriate due to existing hydro-geological conditions and/or sub-surface contamination.

(i) Any municipal street, road and alley re-construction project of \$500,000.00 or more of construction costs, excluding repaving projects of existing roads, shall implement post-construction BMPs for green transportation infrastructure.

(j) Any construction project adding down spouts, gutters and subsurface pipes directing storm water to the curb face shall have a french drain system of perforated pipe and gravel unless site-specific circumstances endanger public safety so as to prohibit its use as determined by the Director of the Department of Public Works. These requirements shall apply even if the project does not constitute new development/re-development as defined by this Chapter.

(k) Any additional requirements imposed by the current NPDES permit and/or TMDL.

(l) The City will evaluate each Urban Runoff Mitigation Plan to ascertain if the proposed plan meets the standards set forth in subsection (b) of this Section. Each plan will be evaluated on its own merits according to the particular characteristics of the project and the parcel to be developed.

(m) The Director of the Department of Public Works or his or her designee shall approve or disapprove the plan. Any plan disapproved by the Director of Department of Public Works or his or her designee must be revised by the developer and resubmitted for further review and approval.

(n) No building permit shall be issued until an Urban Runoff Mitigation Plan has been approved by the Department of Public Works.

(o) The property owner or designated management entity shall be responsible for annual maintenance of its BMP, which will include an inspection of appropriate BMP components.

(p) The owner or the selling agent of any real property that has a post-construction BMP(s) installed pursuant to the requirements of this Chapter shall, in any real property transaction, provide the buyer of the real property with notice informing the buyer of the post-construction BMP(s), including its location, maintenance requirements, and any other

relevant information necessary for the buyer to properly maintain the BMPs. The owner or the selling agent shall provide the notice to the buyer as soon as practicable before transfer of title. The buyer shall execute a receipt therefore as furnished by the City and said receipt shall be delivered to the City's Office of Sustainability and the Environment as evidence of compliance with the provisions of this Chapter. The buyer shall acknowledge that the buyer assumes full responsibility for maintenance of any and all post-construction BMPs. If any disclosure required to be made by this subsection (p) of this Section is delivered after the execution of an offer to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail to terminate his or her offer by delivery of a written notice of termination to the owner or selling agent. Any person who violates the provisions of this Chapter shall be subject to the penalties and remedies specified in Chapter 1.08. In addition, a buyer who does not receive the notice required by this subsection (p) may bring a civil action for damages.

(q) Except as provided in subsection (s) of this Section, an applicant may pay an Urban Runoff Reduction Fee in accordance with the following formula:

$$\begin{aligned} & \text{Project Mitigation Volume (cubic feet)} \times 7.49 \text{ (gallons/cubic foot)} \\ & \times \text{Unit Cost (dollars/gallon)} \end{aligned}$$

(r) For purposes of this Section, the Unit Cost shall be established by resolution of the City Council based on the average

cost/gallon of water for the City to construct post-construction BMPs on City properties during a five (5) year period prior to the adoption of the resolution. Commencing on July 1, 2011 and on July 1st of each fiscal year thereafter, the Urban Runoff Reduction Fee shall be adjusted based on changes in constructions costs. The Urban Runoff Reduction Fee shall be used exclusively to construct Low Impact Development post-construction BMPs designed to achieve at least the same level of water quality protection as if all of the runoff was retained on site and to implement the strategies of the 5-Year Low Impact Development Plan in support of the City's Watershed Management Plan.

(s) An applicant shall not be authorized to pay an Urban Runoff Reduction Fee for the nine specified land use categories found in the SUSMP, but instead must install Low Impact Development post-construction BMP's unless the applicant demonstrates to the Director of the Department of Public Works or his or her designee the infeasibility of implementing these requirements. Recognized circumstances demonstrating infeasibility include: (i) extreme limitations of space for treatment; (ii) unfavorable or unstable soil conditions at a site to attempt infiltration; and (iii) risk of groundwater contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than ten feet from the soil surface. Any other justification for impracticability must be approved by the Regional Board.

(t) An applicant and any successor in interest shall comply with the Urban Runoff Mitigation Plan, including installation of any required BMP and its maintenance.

(u) Any structural or treatment control BMP used for runoff mitigation must include a full capture trash system.

(v) The City shall maintain a list of authorized Post-construction BMPs, a list of manufacturers and products, and *resources and reference* technical materials, which may be updated periodically by the Office of Sustainability and the Environment. Post-construction BMPs not found in these lists may be authorized by the City if the applicant submits treatment results demonstrating treatment effectiveness which is equal to or better than the treatment effectiveness of products on the City lists.

7.10.060 Urban runoff requirements for construction parcels.

The following Best Management Practices, which address the problem of urban runoff pollution, shall apply to all construction parcels in the City. These requirements shall apply at the commencement of demolition of an existing structure and/or commencement of construction and until issuance of a certificate of occupancy.

(a) A copy of any Storm Water Pollution Prevention Plan (SWPPP) required to be submitted to the Regional Board shall be submitted to the City at the same time.

(b) Polluted runoff (including runoff containing sediments and/or construction wastes) from a construction parcel shall not leave the parcel. No wash water from any type of cement and concrete machinery or concrete mix truck shall be allowed to leave the construction parcel. Any washing of equipment in the right-of-way must be contained and properly disposed.

(c) Any sediment or other materials that are tracked off the parcel by vehicles and equipment shall be removed the same day as they are tracked off the parcel. Where determined to be necessary by the Director of the Department of Public Works or his or her designated representative, a temporary sediment control BMP shall be installed.

(d) For any paint removal, paint preparation, or sandblasting activities that will result in particles entering the air or landing on the ground, BMP steps shall be implemented to prevent or minimize to the maximum extent practicable such particle releases into the environment.

(e) Plastic covering shall be utilized to prevent erosion of an otherwise unprotected area, e.g. exposed or open to elements, along with treatment control BMPs to intercept and safely convey the runoff to the MS₄.

(f) No washing of construction or other vehicles shall be allowed adjacent to a construction parcel. No polluted runoff from washing vehicles on a construction parcel shall be allowed to leave the parcel.

(g) Erosion drainage controls shall be utilized depending on the extent of proposed grading and topography of the parcel to prevent runoff, including but not limited to the following:

- (1) Detention ponds, sediment ponds, or infiltration pits;
- (2) Dikes, filter berms or ditches; or
- (3) Down drains, chutes or flumes.

7.10.070 Enforcement and penalties.

(a) Criminal Penalty. Any person who is convicted of violating this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than five hundred dollars or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

(b) Civil Action. Any person, including the City, may enforce the provisions of this Chapter by means of a civil action.

(c) Any person who violates any provision of this Chapter shall be subject to administrative fines and administrative penalties pursuant to Chapter 1.09 and Chapter 1.10 of this Code.

(d) Other Penalties. Any person who violates or aids or incites another person to violate the provisions of this Chapter is liable for each and every such offense for the actual damages suffered by any aggrieved party, for statutory damages in the sum of five hundred dollars per occurrence, and for such attorney's fees and costs as may be determined by the court in addition thereto. The court may also award punitive damages in a proper case as defined by Civil Code Section 3294. The burden of proof for purposes of punitive damages shall be clear and convincing evidence.

(e) Injunction. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates this Chapter may be enjoined there from by any court of competent jurisdiction. Such an injunction may compel an employer to reinstate an employee, furnish back pay or forward pay, furnish lost benefits, or take any other action necessary to make an aggrieved employee whole. An action for injunction under this Chapter may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(f) Nonexclusive Remedies and Penalties. The remedies provided in this Chapter are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

7.10.080 Additional best management practices requirements.

If a determination is made by the Director of the Department of Public Works that the public health and safety may be compromised through the release of contaminants or pollutants from a construction parcel or an existing parcel or as a result of new development/re-development, the Director or his or her designee shall have the authority to require additional BMPs besides those already required by this Chapter and/or by an Urban Runoff Mitigation Plan.

SECTION 2. The Council finds that the adoption of these ordinances is exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 3. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause,

or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

MARSHA JONES MOUTRIE
City Attorney